

U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



(b)(6)

DATE: **MAY 03 2013** Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

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Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Mexico who first entered the United States without inspection in February 2003 and departed to Mexico on October 1, 2009, having accrued unlawful presence from August 31, 2006, his 18th birthday, until his departure. The applicant applied for an immigrant visa as the beneficiary of an approved Petition for Alien Relative (Form I-130) and was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present for one year or more. He is seeking a waiver of inadmissibility in order to live in the United States.

The director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of Director*, August 10, 2010.

On appeal, counsel for the applicant contends that USCIS erred in overlooking the extreme hardships that the applicant's parents are suffering, and will continue to suffer, as a result of their son's inadmissibility. In support of the appeal, counsel submits additional supporting evidence, including, but not limited to: school records; written and photographic copies of an eviction notice; mortgage and earnings statements, employment and pay verification, and other financial records; letters from health care providers, medical and prescription records. The record consists of all documentation provided regarding the applicant's Form I-601 and this appeal. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General (Secretary) that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien....

A waiver of inadmissibility under section 212(a)(9)(B)(v) is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant and his child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen father and lawful permanent resident mother are both qualifying relatives in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). Factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, while hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, or cultural readjustment differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23

I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, although family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. See *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); conversely, see *Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

The applicant's mother and father contend they will continue to suffer physical, emotional, and financial hardship if the applicant is unable to reside in the United States. Their physical and emotional hardship claim focuses on the applicant's mother's assertion that she suffers from anxiety and depression due to the absence of her son, and that she has several medical conditions caused and/or exacerbated by stress. Documentation establishes that she has been diagnosed with and is being treated for Type 2 diabetes, high cholesterol, and high blood pressure; is taking prescription medication and receiving regular medical monitoring; and has experienced increasing problems controlling her blood sugar which has caused her to suffer migraines and insomnia. Her stress is compounded by concern for her son's safety, and official U.S. government reporting substantiates these fears. The U.S. State Department has issued a series of advisories to defer non-essential travel in many parts of Mexico, including the family's native San Luis Potosí.

Medical letters show the applicant's mother is the primary caretaker for a daughter diagnosed with several psychological disorders, including major depression and schizophrenia. The applicant's father reports both being concerned about his son and feeling helpless and worried to observe the emotional impact of the son's absence on a mother already under stress from caring for a family that includes a daughter with bipolar disorder. He notes that his wife's conditions are worsening because she is unable – due to financial issues discussed below -- to refill prescriptions at a time she is under great strain. He also explains that, as his truck driving job keeps him away from home for significant periods, he relied on the applicant to help his mother manage the extended family unit and serve as a father figure to his younger siblings while their father was on the road.

Regarding financial hardship caused by separation, newly provided documentation establishes that the applicant's parents and four other children lost their home to foreclosure, were evicted, and are presently sharing a two-bedroom apartment with a family member. There is evidence suggesting that, besides the applicant's father, the applicant was the only family member contributing income – approximately \$1,600 monthly – before his departure, and that without the applicant's earnings, the family was unable to pay the mortgage and other debts. Due to lack of medical insurance, the applicant was still paying off hospital labor and delivery charges related to his son's 2007 birth, and counsel explains that this documented expense was added to the qualifying relatives' debt burden when their son left the country. As noted above, the applicant's mother claims that loss of his income has forced her to forego prescription medication needed to control her diabetes and blood

pressure. The applicant claims that he has been unable to find work in Mexico, and country condition information establishes that any job he might find would pay far less than he earned in the United States. The record contains substantial evidence that, without the applicant's financial support, his parents have been unable to meet their financial obligations.

For all these reasons, the cumulative effect of the physical, emotional, and financial hardships the applicant's parents are experiencing due to their son's inadmissibility rises to the level of extreme. The AAO concludes that based on the evidence provided, were the applicant's parents to remain in the United States without the applicant due to his inadmissibility, they would continue to suffer extreme hardship beyond those problems normally associated with family separation.

The qualifying relatives note that safety concerns, coupled with their parental obligations, would cause them to experience hardship by relocating abroad to reside with the applicant. These obligations include caring for their grandchild, the applicant's son, as well as their daughter with bipolar disorder discussed above, and several other teenage children. While the applicant's father is a U.S. citizen, his permanent resident mother would risk forfeiting her status by returning to her native country. Regarding ties to the United States, documentation establishes that the applicant's parents have strong family connections in the United States and indicates that the applicant is the only one of six siblings left in Mexico.

Counsel asserts that, even were the qualifying relatives able to afford to travel to visit the applicant, their fear of ongoing violence and crime would make it a hardship for them to do so:

CRIME: Crime in Mexico continues to occur at a high rate and can often be violent. Street crime, ranging from pick pocketing to armed robbery, is a serious problem in most major cities. Carjackings are also common, particularly in certain areas (see the Travel Warning for Mexico). The homicide rates in parts of Mexico have risen sharply in recent years, driven largely by violence associated with transnational criminal organizations.

Mexico—Country Specific Information, U.S. Department of State (DOS), February 15, 2013.

The U.S. Embassy site has published warnings regarding current threats advising U.S. citizens against non-essential travel to many parts of Mexico, including San Luis Potosí where the applicant grew up and currently is living, and strictly limiting travel there by government personnel. See *Travel Warning—Mexico*, DOS, November 20, 2012.

Based on a totality of the circumstances, the AAO concludes the applicant has established that his parents would suffer extreme hardship were either of them to relocate abroad to reside with the applicant.

Review of the documentation on record, when considered in its totality, reflects the applicant has established a qualifying relative would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and

pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. See *Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardships the applicant's mother or father would face if the applicant were to reside in Mexico, regardless of whether they accompanied the applicant or remained here; the applicant's lack of any criminal record; supportive statements; passage of over 10 years since the applicant was brought to this country as a 14-year-old; his schooling here; his stable U.S. employment; and his young child and fiancée. The only unfavorable factor in this matter is the applicant's accrual of unlawful presence.

Although the applicant's violation of the immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Given the passage of time since the applicant's violation of immigration law, the AAO thus finds that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden and, accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The waiver application is granted.